



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7185764

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner seeks to classify the Beneficiary as an alien of extraordinary ability.¹ *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.²

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

¹ The approval of a prior petition, filed by a previous employer and disclosed on the current petition form, granted the Beneficiary a lower-priority immigrant classification.

² We note the involvement of an attorney in preparing the appeal. The appeal, however, did not include a new Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. Therefore, we consider the Petitioner to be without representation on appeal. *See* 8 C.F.R. §§ 103.3(a)(2)(v)(A)(2), 292.4(a); *see also* the instructions to Form G-28, available online at <https://www.uscis.gov/sites/default/files/files/form/g-28instr.pdf>.

- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of the beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the beneficiary is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner, which develops technology for self-driving vehicles, seeks to employ the Beneficiary as a software engineer. After earning a master's degree in computer science, the Beneficiary worked as a senior firmware engineer for [redacted] Corporation from 2011 to 2015; as head of platform software at [redacted] Inc., from 2015 to 2017; and as a senior embedded systems engineer from 2017 to 2018. The Petitioner hired the Beneficiary as a senior software engineer in 2018, and intends to continue that employment.

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims that the Beneficiary meets three criteria, summarized below:

- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director found that the Beneficiary met two of the evidentiary criteria, relating to contributions and remuneration. On appeal, the Petitioner asserts that the Beneficiary also meets the third claimed criterion relating to leading or critical roles. After reviewing all of the evidence in the record, we conclude that the Petitioner has not shown that the Beneficiary meets this third claimed criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner notes that the Beneficiary served as head of device software at [] Inc., “leading an engineering team of 38 engineers.” The device software team, by itself, is not an organization or establishment in its own right. The Petitioner has not explained how leading the team constitutes a leading or critical role for [] as an organization. Without further evidence and information, the Beneficiary’s leadership of that team does not suffice to show a leading or critical role in the overall company. Furthermore, the record does not document the size of that company or show where the Beneficiary stood in the organizational hierarchy.

The Petitioner contends that, while the evidence about the Beneficiary’s work emphasizes specific projects, those projects were so essential to the companies’ reputations and product lines that their outcomes were critical to the respective companies. For example, one of the Petitioner’s former employers, [] makes cameras and related software to create three-dimensional virtual tours of real estate properties. []’s chief technology officer states:

Faced with unprecedented demand for our [] cameras, there were not enough [] sensors available in order to meet this market demand. . . .

[The Beneficiary] tirelessly worked with different sensor vendors in the market to determine which sensor could be used for the [] cameras [The Beneficiary] became []’s main point of contact, who interfaced with the sensor vendor’s software team and spearheaded the development of the specialized software for the new sensor in order to ensure that the [] cameras could be shipped with this new sensor.

. . . . Without [the Beneficiary’s] extraordinary and critical work, [] could have lost tens of millions [of] dollars, along with suffering a severe hit to our reputation if we had not been able to manufacture these high-demand cameras.

We agree with the Director’s conclusion that the Beneficiary’s central role in specific projects does not translate to a leading or critical role at the companies where he worked on those projects. Complex projects of the type described in the record require competent and effective contributions from many individuals, but the Beneficiary’s innovations and problem-solving skills are not inherently leading or critical roles for the organization as a whole.

The Director concluded that the Beneficiary had made original scientific contributions of major significance in the field. Those contributions, however, do not also imply a leading or critical role when the Beneficiary’s own employers benefit from his work. Otherwise, the two criteria (relating, respectively, to contributions and to leading or critical roles) would effectively collapse into one another, contrary to the regulatory intent of requiring diverse types of evidence and the statutory requirement for extensive documentation. The value of the Beneficiary’s contributions, to his employer and to the broader field, are not necessarily commensurate with the nature of his role within a given organization.

The Petitioner has not shown that the Beneficiary has performed in a leading or critical role for organizations or establishments with a distinguished reputation.

In light of the above conclusions, the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the two remaining criteria cannot change the outcome of this appeal. Therefore, we need not revisit the Director's findings regarding the other two criteria.³

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the Beneficiary has earned a level of recognition indicative of the required sustained national or international acclaim or consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Beneficiary is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

To establish a reputation outside of the companies that have employed the Beneficiary, the Petitioner submitted what it called "testimonial letters from independent references," specifically officials of companies that have not employed the Beneficiary. The record, however, documents the Beneficiary's connections to most of those companies (such as supervising a team of contractors from one such company). The letters, therefore, are not strong evidence that the Beneficiary's reputation extends significantly beyond his own past and present employers and their contractors and clients.

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

³ *See INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).